

HOUSE No. 629

By Mr. Atsalis of Barnstable, petition of Demetrius J. Atsalis relative to third party assistance to trustees and further regulating trust instruments. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO TRUST INSTRUMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 203 of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended by inserting after Section
3 14B, the following two new sections:

4 Section 14C. With respect to a third person dealing with a
5 trustee or assisting a trustee in the conduct of a transaction, if the
6 third person acts in good faith and for a valuable consideration
7 and without actual knowledge that the trustee is exceeding the
8 trustee's powers or improperly exercising them:

9 (a) The third person is not bound to inquire whether the trustee
10 has power to act or is properly exercising a power and may
11 assume without inquiry the existence of a trust power and its
12 proper exercise.

13 (b) The third person is fully protected in dealing with or
14 assisting the trustee just as if the trustee has and is properly exer-
15 cising the power the trustee purports to exercise.

16 Section 14D. (a) A third person may receive a certification of
17 trust in lieu of receiving a copy of the trust instrument to establish
18 the existence or terms of the trust. A certification of trust may be
19 executed voluntarily or at the request of the person with whom the
20 trustee is dealing.

21 (b) The certification of trust may confirm the following facts or
22 contain the following information:

23 (1) The existence of the trust and date of execution of the trust
24 instrument.

- 25 (2) The identity of the settlor or settlors of the trust.
- 26 (3) The identity of the currently acting trustee or trustees of the
27 trust.
- 28 (4) The powers of the trustee.
- 29 (5) The revocability or irrevocability of the trust and the iden-
30 tity of any person holding any power to revoke the trust.
- 31 (6) When there are multiple trustees, the signature authority of
32 the trustees, indicating whether all or less than all of the currently
33 acting trustees are required to sign in order to exercise various
34 powers of the trustee.
- 35 (7) The trust identification number, whether a social security
36 number or an employer identification number.
- 37 (8) The manner in which title to trust assets should be taken.
- 38 (c) The certification shall contain a statement that the trust has
39 not been revoked, modified, or amended in any manner which
40 would cause the representations contained in the certification of
41 trust to be incorrect and shall contain a statement that it is being
42 signed by all of the currently acting trustees of the trust. The certi-
43 fication shall be in the form of an acknowledged declaration
44 signed by all currently acting trustees of the trust.
- 45 (d) The certification of trust shall not be required to contain the
46 dispositive provisions of the trust which set forth the distribution
47 of the trust estate.
- 48 (e) A person may require that the trustee offering the certifica-
49 tion of trust provide copies of those excerpts from the original
50 trust documents and amendments thereto which designate the
51 trustee and confer upon the trustee the power to act in the pending
52 transaction. Nothing in this section is intended to require or imply
53 an obligation to provide the dispositive provisions of the trust or
54 the entire trust and amendments thereto.
- 55 (f) A person who acts in reliance upon a certification of trust
56 without actual knowledge that the representations contained
57 therein are incorrect is not liable to any person for so acting and
58 the reliant will be fully protected and released to the same extent
59 as though all such representations had been correct. A person who
60 does not have actual knowledge that the facts contained in the cer-
61 tification of trust are incorrect may assume without inquiry the
62 existence of the facts contained in the certification of trust. Actual
63 knowledge shall not be inferred solely from the fact that a copy of

64 all or part of the trust instrument is held by the person relying
65 upon the trust certification. Any transaction, and any lien created
66 thereby, entered into by the trustee named in the certification of
67 trust and a person acting in reliance upon a certification of trust
68 shall be enforceable against the trust assets. However, if the
69 person has actual knowledge that such trustee is acting outside the
70 scope of the trust, then the transaction is not enforceable against
71 the trust assets. Nothing contained herein shall limit the rights of
72 the beneficiaries of the trust against the trustee.

73 (g) A third person who acts in good faith pursuant to a certifi-
74 cation under this section is not bound to ensure the proper applica-
75 tion of trust property paid or delivered to the recipient thereof.

76 (h) A person's failure to demand a certification of trust does not
77 affect the protection provided that person by section fourteen C,
78 and no inference as to whether that person has acted in good faith
79 may be drawn from the failure to demand a certification of trust.

80 Nothing in this section is intended to create an implication that
81 a person is liable for acting in reliance upon a certification of trust
82 under circumstances where the requirements of this section are
83 not satisfied.